2810

SUPREME COURT OF THE UNITED STATES.

No. 267.

THE UNITED STATES, APPELLANTS,

vs.

ROBERT F. STOCKTON.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, Print.

Transcript of the proceedings in case No. 8—Robert F. Stockton, claimant, vs. *The United States, defendants—for the place named "Potrero de Santa Clara."*

OFFICE OF THE BOARD OF COMMISSIONERS

To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-fourth day of January, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Robert F. Stockton, for the place named "Potrero de Santa Clara," was presented, and ordered to be filed and docketed with No. 8, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *June* 2, 1852.

In case No. 8, Robert F. Stockton, for the place named "Potrero de Santa Clara," the deposition of James F. Kennedy, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *Jan'y* 4, 1853.

In the same case, the deposition of William D. M. Howard, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, with document marked H. J. T., No. 1, annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *Aug.* 11, 1853.

Case No. 8, R. F. Stockton, was, by consent of parties, placed on the trial docket and called. The counsel for the claimant read the evidence; argued, submitted, and taken under advisement.

SAN FRANCISCO, *Nov.* 15, 1853.

In the same case, Commissioner Robert A. Thompson delivered the opinion of the board, confirming the claim.

(Vide page 16 of this Transcript.)

In the same case, Commissioner Alpheus Felch delivered his opinion dissenting in some points, but concurring in the result.

(Vide page of this Transcript.)

In the same case, Commissioner Thompson Campbell delivered his opinion, dissenting in some points, but concurring in the result.

(Vide page of this Transcript.)

Petition.

To the Honorable Commissioners to settle private land claims in California:

Robert F. Stockton, of the State of New Jersey, respectfully shows, that on the twenty-ninth day of February, 1844, Manuel Micheltorena, governor of the department of the Californias, by virtue of the authority of his office, granted to James Alexander Forbes the tract of land known by the name of the Potrero de Santa Clara, situated in the present county of Santa Clara, containing a little less than one square league, with the limits described in the grant, and shown by the map accompanying the grant, a copy of which grant and map is hereto annexed, marked A, with a translation, B.

And the said Stockton says, that on the 23d day of September, A. D. 1847, by a proper deed, the said James Alexander Forbes conveyed the said land to him, the said Stockton, a copy of which deed in Spanish is hereto annexed, marked C, with a translation marked D.

And the said Stockton says, that immediately after the grant was made, the land was occupied by the said Forbes, and since the making of said deed has been, and now is, possessed and occupied by himself fully and exclusively.

He further says, that though the land has not been surveyed by the surveyor general, the precise position and boundaries granted, being the "Potrero de Santa Clara," were at the time of the grant well known, as shown by the map accompanying the grant, and that the same are well known and unmistakable now; the land to the northward, westward and southward being bounded by the old ditch mentioned in the grant, and to the eastward by the river Guadalupe.

He further says, he knows of no interfering claim; that the land claimed is less than one league, and that he relies for confirmation of the title upon the grant and deed, copies of which are hereto annexed, upon the papers and minutes relating to the title now in the archives in the possession of the surveyor general, and upon such proofs of boundaries and possession as he may believe necessary.

Therefore he prays confirmation of the said grant of land to himself.

By his attorneys,
HALLECK, PEACHY & BILLINGS.

Filed in office January 24, 1852.

J. B. CARR, *Sec'y.*

Deposition of W. D. M. Howard.

SAN FRANCISCO, *Jan'y* 4, 1853.

On this day, before commissioner Harry J. Thornton, came Wm. D. M. Howard, a witness in behalf of the claimant, Robert F. Stockton, petition No. 8, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

My name is William D. M. Howard, my age is 32 years, and I have resided in California 11 years. I am acquainted with the signatures of Manuel Micheltorena, Manuel Jimeno, Diejo Alexander Forbes, Isaac Branham and Guillermo Fisher. Their signatures to the document before me marked A, and filed herewith, are genuine. I am acquainted with the rancho called "Potrero de Santa Clara," and described in these papers; James Alexander Forbes occupied it in 1844, and had a house on it and considerable stock of cattle. He continued to occupy it until the latter part of 1847, when he sold it to Commodore Stockton, who has since occupied it by his employees with horses and cattle, and a large portion of it cultivated.

WM. D. M. HOWARD.

U. S. law agent present.

Sworn to and subscribed before me this 4th Jan'y, 1853.

Filed in office Jan'y 4, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Jas. F. Kenedy.

OFFICE OF THE BOARD OF LAND COMMISSIONERS FOR CAL'A,
SAN FRANCISCO, *June* 2, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came James F. Kenedy, a witness produced in behalf of the claimant, Robert F. Stockton, whose petition is No. 8 on the commissioners' docket, and was duly sworn. The U. S. law agent present.

In answer to questions in behalf of the claimant, the witness testified as follows:

My name is James F. Kenedy, my age forty years, and I reside near San José, in Santa Clara county. I have known the Rancho

Potrero de Santa Clara, in Santa Clara county, and have resided on the same ever since the latter part of February, 1850; I have had charge of it, as agent of Commodore Stockton, the claimant, during that period, and have had charge of it for him. The whole tract is fenced in with an iron fence; the fence was put up in 1850. Before the building of the fence there was a ditch from the Guadalupe river round the land to the river again, with a row of trees along the ditch. About eighteen hundred acres of the land is under cultivation, and in use for grain, mowing, and pasturage; about three hundred of which have been ploughed. The quantity of land in the whole tract is about nineteen hundred acres; it is all in use, except swamp lands. There was a substantial frame house on the land when I first knew it, which was then occupied by an agent of Commodore Stockton. Since then, nine double frame houses and a large barn have been erected on the place. The improvements which have been made on the land since I have occupied it, made by Commodore Stockton, have cost over seventy-five thousand dollars.

JAMES F. KENEDY.

Sworn and subscribed before me.

HILAND HALL,
Commissioner.

Filed in office June 2, 1852.

GEO. FISHER, *Sec'y.*

Exhibit A.

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comandante G'ral á Inspector del Departamente de Californias.

[SEAL.]

Por cuanto Dn. Diego Forbes, Mejicano por naturalizacion, ha pretendido para el beneficio personal, y el de su familia el terreno conocido con el nombre de Potrero de Santa Clara, circumdado de un ballado que actualm'te tiene esceptuando las tierras de regadio de las que hace uso la mission de Santa Clara, que estan por la parte del norte de la huerta, y con la precisa condicion de dejar á beneficio de Santa Clara las mil varas de terreno que se le habian concedido en el parage nombrado Sn. Pedroy Sn. Pablo, como igualmente no impedir la introduccion en el Potrero de la caballada mansa de las espresada mission; practicadas previamente las dili-

gencias y averignaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el terreno mencionado bajo las obligaciones que se espresan, y sujeto a la aprobacion de la ex'ma asamblea departamental, y a las condiciones siguientes:

1a. No podra venderlo enagenarlo ni hipotecarlo, imponer censo vinculo fianza ni otro gravamen alguno aunque se á piadosa, ni pasarlo á maños muertas.

2a. Podra cercalo ni perjudicar las travesias, caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le acomode, pero dentro de un año fabricara case y estara habitada.

3a. Cuando se confirme la propriedad de el solicitara del juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra á mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es poco menos de un sitio de ganado mayor. El juez que diere la posecion lo hara medir conforme á ordenanza que dando el sobrante que resulta á la nacion para las usos convenientes.

5a. Si contraviniere á estas condiciones perdera en derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por valedero el presente se tome razon de el en libro respectivo.

Dado en Monterrey à viente y nueva de Febrero, de mil ochocientos cuarenta y cuatro.

MANUEL MICHELTORENA.

MANUEL JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro respectivo fojas 6 f'ha. JIMENO.

Exhibit B.

En el Pueblo de San José Guadalupe en el Alta California, á los veinte y tres dias del mes de Setiembre, de mil ochocientos cuarenta y siete, ante mi Guillermo Weeks, Juez de Paz de esta demarcacion y ante los testigos de mi asistencia que despues se nombraran; y con quienes actuo en forma debida; comparecio Don Diejo Alejandro Forbes aquien doy fé conozco, y dijo; que por si y á nombre de sus hijas, herederas y sucesores, y de quienes de ellas linbrese titulo, vos y causa en culquiera manera; vende y de en venta solemne y enagenacion perpetua à Don Roberto F. Stockton, ciudadano de los Estados Unidos; todo el derecho interes y titulo que tiene al terreno conocido con el nombre de Potrero de Santa Clara; que antes pertenecia à la mision del mismo nombre; cuya descrip-

cion esta demarcado en el titulo de concesion espedido por el gobierno de este departamente y declara y asegura el enunciado Señor Forbes, no tener vendido, enagenado ni empeñado el espresado terreno, y que esta libre de todo gravamen perpetuo, temporal especial, general, tacito y espero; y como talso lo vende en precio y cantidad de diez mil y quiensentes pesos (10,500) con la condicion de que queda incluso en esta verita, todo el ganado vacuno que actualmente existe dicho terreno, y en el tiene su querencia; cuyo valor espresado tiene entregado al comprador y recibido el otorgante à ni entera satisfaccion; y asi mismo declara que el justo precio y verdadero valor del espresado terreno y del ganado que en el existe y ahora vende en la mencionada cantidad de diez mil y quinientes pesos ($10,500) y que no vale mas y aun en el caso de que mas valga, ò valer pueda del exciso en poca ò mucha suma hace donacion à favor del comprador y de sus herederos y sucesores; y esta donacion y gracia pura perfecta é irrevocable que le hace, se llama en derecho intervivos coninsumacion co demas firmesas legales; con la condicion que se la entregara al referido Don Roberto F. Stockton ò à quien le represente, el enunciado terreno y ganado inmediamente habiendo condescendido en ello el comprador.

Y el mencionado Don Diego Alejandro Forbes, renuncia las leyes que tratan de contratas, ventas, truegues, y de otras en que hoy lesion en mas ó menos de la unitad del juste procis; y queda obligado en que desde ahora, en adelante y para siempre jamas, se apodera, quita y aparta á si y á sus hevideros y sucesores, y de quienes de ellos hubiese titulo, voy y causa, del dominio, propriedad, posecion titulo, voy recursos y otros en al esquiera derechos que le competan al enuncido terreno llamado el Potrero de Santa Clara y al ganado espresado. Todo lo cual cede, renuncia y traspasa en el comprador y quien le represente para que lo posea, joce, cambie uso, enagene y disponga del lo como de cosa suya adquerida con justo y legitimo titulo; y se obliga á demas el otorgante á recabar del gobierno Mejicano la confirmacion del titulo original. Y a la observancia de todo lo referido, se obliga con todos sus bienes habidos y por haber; y con ellos se romite à los S'rs Jueces y Justicias, que de sus causas puedan y deban conocer conforme á derecho para que á su complimiento le competan y aprenvien como por sentencia definitiva constituda y pasada en cosa juzgada. Que por tal la recibe y renuncia las leyes que en el caso le favorezcan. En cuyo testimonio asi lo ortorgó y firmo convenigo y los testigos de que doy fé.

DIEGO ALEX. FORBES.
JAMES W. WEEKS, *Alcalde.*

Testigos de assa:
ISAAC BRANHAM,
GUILLERMO FISHER.

This foregoing document is recorded in the book of archives appertaining to the record of lands, in pages 128 and 129, giving a true copy from the original of the lands called the Potrero de Sta. Clara; the same formerly belonged to Dn. Diego A. Forbes, and now actually appertains to Robert F. Stockton.

Given under my hand, at my office of the Pueblo de San José, this 2d day of October, A. D. 1847.

JAMES W. WEEKES, *Alcalde*.

Costs, $2 4 reales.

Filed in office January 4, 1853.

GEO. FISHER, *Sec'y*.

Translation of the Grant.

Stamp First—Eight Dollars.

Provisionally authorized by the maritime custom-house, at the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Manuel Micheltorena, General of Brigade of the Mexican army, Adjutant General of the Staff of the same, Governor, Commandant General and Inspector of the Department of the Californias.

Whereas Don Diego Forbes, a Mexican by naturalization, has, for his own personal benefit and that of his family, asked for the land known by the name of "Potrero de Santa Clara," now enclosed by a ditch, (or line of earth thrown up,) except the irrigated lands now used by the mission of Santa Clara, which lie at the north of the garden, and on condition of leaving for the benefit of said mission the thousand varas which have been granted to him in the place called "San Pedro y San Pablo," and also of not impeding the introduction into the Potrero of the tame horses of the said mission; the proper measures and examinations having previously been taken, as required by the laws and regulations, using the faculties conferred on me, in the name of the Mexican nation, I have granted him the aforesaid land under the obligations above expressed, and subject to the approbation of the most excellent departmental assembly, and to the following conditions:

1st. He cannot sell it, alienate or hypothecate it, impose tax, entail, pledge, or other incumbrances, even for pious purposes, nor pass it in mortmain.

2d. He may enclose it without prejudice to the crossings, roads and servitudes; enjoy it freely and exclusively, making such use and cultivation of it as he may see fit; but within one year he shall build a house, and it shall be inhabited.

3d. When the ownership is confirmed, he will ask the respective magistrate to give him juridical possession in virtue of this despatch, for which purpose the boundaries shall be marked out, and in their limits there shall be placed, besides the landmarks, some fruit trees, or wild ones of some utility.

4th. The land hereby granted is little less than one sitio de ganado mayor (one square league.) The magistrate who may give the possession will have it measured conformably to ordinance, leaving the surplus to the nation for its own convenient uses.

5th. If he should contravene these conditions he shall lose his right to the land, and it shall be denounced by another.

Wherefore I order that, the present being held as valid, note be taken of it in the corresponding book.

Given in Monterey, the 29th day of February, one thousand eight hundred and forty-four.

MANUEL MICHELTORENA.

MANUEL JIMENO,
Secretary.

Translation of Deed.

In the Pueblo of San José Guadalupe, in Alta California, on the 23d day of September, 1847, before Guillermo Weeks, justice of the peace of this jurisdiction, and before my attesting witnesses hereinafter named, with whom I act in due form, appeared Don Diego Alexander Forbes, whom I certify I know, and who declared that, for himself and in the name of his children, heirs, and successors, and of any claiming, in any manner, title, voice, or cause under them, he sells and gives in solemn sale and perpetual alienation to Don Robert F. Stockton, citizen of the United States, all the right, interest, and title which he has to the land known by the name of Potrero de Santa Clara, which formerly pertained to the mission of the same name, the description of which is given in the title issued by the government of this department; and said Forbes declares and assures that he has not sold, alienated, or pledged said land, and that it is free from any incumbrance, perpetual, temporary, special, general, tacit, or expressed, and, as such, sells it to him for the price and sum of $10,500, with the condition that this sale includes all the neat cattle now existing on said land, and which were raised on it; which aforesaid sum the purchaser has paid, and the seller has received to his entire satisfaction; he also declares that the just price and true value of said land and the cattle pertaining, which he now sells, is the aforesaid sum of $10,500, and that it is not worth more; and even in case it is or may be worth more, of the excess, be it great or small, he makes a gift to the purchaser and to his heirs and successors, and this donation and gift, pure, perfect, and irrevocable, which he makes to him, is called in law intervivos with the judicial inter-

vention and other legal securities; with the condition that said land and cattle shall be delivered to said Don Robert F. Stockton or his representatives, as the purchaser shall ask them.

And the said Don Diego Alexander Forbes renounces the laws in regard to contracts, sales, exchanges, and others in which there is lesion in more or less of the half of the just price, and he binds himself now, in future and forever, that he himself will, and his heirs and successors, and any claiming under them right, title or claim, shall give up, dispossess themselves of, retire from the dominion, ownership, possession, title, claim, recourse, and whatever other right belongs to the aforesaid tract called "El Potrero de Santa Clara," and the said cattle, all of which he cedes, renounces and transfers to purchaser and his representatives, to possess, enjoy, exchange, use, alienate and dispose of as a thing acquired by just and legitimate title, and the vendor also binds himself to procure from the Mexican government the confirmation of the original title. And for the observance of all the foregoing, he binds himself and all his property which he now has or may acquire, and with it he submits himself to the magistrates and tribunals which in this matter may or ought to take jurisdiction according to law, that they may compel and oblige him to fulfil the same as by a definitive sentence, consented to and having the force of res judicata. That as such he receives it and renounces the laws in his favor. In testimony of which he thus made and signed with me and the witnesses, of which I certify.

(Signed) DIEGO ALEX. FORBES,
(Signed) JAS. W. WEEKES, *Alcalde*.

Assisting witnesses:
ISAAC BRANHAM,
GUILLERMO FISHER.

Filed in office Jan'y 24, 1852.

GEO. FISHER, *Sec'y*.

Opinion of Commissioner Thompson.

ROBERT F. STOCKTON
v.
THE UNITED STATES. } Potrero de Santa Clara.

The claimant in this case derives his title by virtue of a conveyance from James Alexander Forbes, dated the 23d day of September, 1847. The original grant was made to said Forbes on the 25th day of February, 1842, by governor Manuel Micheltorena, and describes the land as the "Potrero de Santa Clara," now enclosed by a ditch or line of earth thrown up, except the irrigated lands now used by the mission of Santa Clara, which is at the north of the garden. The grant is made on the condition of leaving for the benefit of said mission the thousand varas which have been

granted him in the place called San Pedro y San Pablo, and also of not impeding the introduction into the Potrero of the tame horses of the said mission, and subject to the approval of the departmental assembly. Then follows the usual conditions of occupation, cultivation, and juridical possession, &c.; and in addition, the following, numbered No. 1 in the enumeration contained in the grant:

1st. He cannot sell it, alienate, hypothecate it, impose tax, entail, pledge or other incumbrances, even for pious purposes, nor pass it in mortmain.

The genuineness of the grant and deed of transfer from Forbes to the claimant are duly proven; and also, that in 1844 Forbes had a house on the land and a stock of cattle, and occupied it until the sale to claimant in 1847. As he seems during all that period to have continued in the undisputed and uninterrupted possession and enjoyment of the land, we may reasonably infer that the first named conditions were complied with; and although there is no approval by the departmental assembly, or juridical survey, yet, as the boundaries are well defined, and are proven to contain less than one league, the case would be clearly within those equitable rules heretofore settled by the board, and entitled to confirmation, but for the condition first enumerated in the grant and quoted above. This condition, though not common to all the grants of land by the Mexican authority in California, is found in many of them; it is therefore proper to consider here very briefly its legal effect and operation. The evident object in the Spanish government in granting lands in her distant colonies, was to secure their permanent settlement and occupation, and with that view the alienation of the lands by the grantees were generally discouraged, and in some cases positively prohibited. In the regulations of Don Felipe de Vieve for the granting of lands in California, dated June 1st, 1779, and approved by the king on the 24th of October, 1781, *suertes* to be granted and declared to be inalienable, and inalienable forever. Neither would the grantee or his heirs impose on it either tax, entail, reversion, mortgage, or any other burden, even for pious purposes.

The regulations and instructions of Morales for conceding lands in Louisiana and West Florida, dated July 17, 1799, provide that those who obtain lands shall clear and put in cultivation a proportion of the land within three years, during which time he shall not sell or dispose of the land, nor after its expiration, without the consent in writing of the intendancy, which consent should not be granted unless the conditions had been fulfilled. The decree of the Spanish Cortes of the 4th of January, 1813, seems to have intended an entire new system in relation to the granting of the public domain, and to have abrogated all the previously existing laws and regulations on the subject. This law, together with the constitution under which it was framed, was annulled by the decree

of Ferdinand VII of May 4th, 1814; but the revolution of 1820, which restored the constitution of 1812, and all laws of the Cortes passed under its authority, again brought it into operation, since which time it has been in force in Mexico, except so far as it is incompatible with the plan of Iguala, the treaty of Cordova, and the Mexican constitution, or has been repealed by subsequent legislation. That decree declares, all lands which may be hereafter granted shall be granted in full ownership and property to the grantees and their successors; but with this proviso, that they shall not alienate them until the expiration of four years from the date of the grant, nor ever subject to entail, or transfer them in mortmain.

That this law has always been considered as in force in Mexico, we have the authority of Galvan, and also of Rodriguez de San Miguel, an eminent and enlightened Mexican jurist. Both of them include it in their collection of Spanish laws in force in Mexico. That the former published in 1829, and the latter, under the title of "Pundentues Hispano Mexicanes," in 1840, in which he calls attention particularly to the provision that all lands granted shall be in full ownership. And it is by virtue of its authority that all grants of land under the laws of Mexico have since been considered and held as grants in full property. According to the principles of the common law, such a condition in a grant as that now under consideration would be clearly a nullity, it being a repugnant condition and inconsistent with the estate granted. In such a case the absolute fee would vest in the grantee, notwithstanding the condition, and he might dispose of it as freely as if it had not been inserted in the grant. Bac. Ab., Condition; 9 Wheaton, 325; Vis. In., 324. And the same doctrine, though not so distinctly laid down in the civil law, is clearly inferrible from those principles which class repugnant conditions with those which are impossible, and therefore null. Assuming, then, that such a condition in the abstract would be absolutely void and of no effect, the governor would have no authority to insert it in the grant, unless that authority was expressly conferred by the law. And to this point we will now direct the inquiry.

The whole power of the governor of California to grant lands is derived from the Mexican colonization law of the 18th August, 1824, and the executive regulations of the 21st November, 1828, and the power to impose such a restriction, if it exist at all, must be derived from them or from the law of the Spanish Cortes of the 4th January, 1813, before referred to; and we have already seen that the latter limits the restriction to the term of four years. Neither of the two first mentioned acts confers on the governor any such authority; the only direct restriction which they impose is that contained in the 13th section of the law of the 18th August, 1821, which prohibits the transfer of the premises in mortmain.

This limitation, as we have seen, is contained in the law of the Spanish Cortes of the 4th January, 1813, from which it seems to have been incorporated into the Mexican colonization law of 1824. That law having adopted or retained this restriction, and entirely omitted the other in relation to the right of alienation contained in the same section, it is fair to conclude, reasoning inferentially, that it was not the intention of the law to impose the latter at all. The restriction concerning entails had already been provided for by the law of the Mexican congress of the 7th of August, 1823, which reaffirms the law of the Spanish Cortes of the 27th September, 1820, abolishing all kinds of entails, and declares that all magnusgos cacieusgos are, and other kinds of entails shall be, free property, and no one shall be permitted in future to entail either such or any other kind of property. Escriche, in his Law Dictionary, edition of 1851, page 610, after giving a summary of the old Spanish laws on prohibitions against alienations, concludes as follows: "But now no entail can be established on any class of property or rights, nor can their alienation be prohibited either directly or indirectly." From the above brief view of the Mexican law on this point, it appears very clear that the governor had no authority to impose the restriction now under consideration, prohibiting perpetually the alienation of the land granted, and that the condition of the grant before quoted is therefore a nullity. A question, however, might arise, whether a temporary restriction on the right to alienate may not exist by implication growing out of the conditions on which the grant was made. From the resumé of the Spanish laws and regulations on this point, contained in a former part of this opinion, it is very evident that the principal objection of the restriction which they impose on the power to alienate was to insure the settlement, occupation, and cultivation of the lands by the grantee, and the Mexican laws for the granting of lands seem clearly to be framed with a view to the accomplishment of the same, and the first article of the regulations of 1828 makes the object and purpose of the grant to be the occupation or cultivation of the land, and imposes on the grantee an implied obligation to carry out that object as the condition on which the grant was made, and the consideration which he is to render for it. In case, therefore, of an imperfect or inchoate title until such conditions are performed, his rights under the grant must be considered to a certain extent incomplete, and even liable to be defeated by denouncement, and transferred to another. It might therefore well be questioned whether a conveyance made prior to such performance would in strict law have any validity; or, if it had, whether the alienee would not take the estate subject to all the objections which might exist to the claim of the original grantee. It is not, however, necessary to consider those questions here.

It was obviously the intention of the Mexican colonization laws

that all grants made under them should be in full property, and that whenever the grantee has perfected his right by substantial compliance with the conditions imposed by the laws, he became the absolute owner of the fee, and might dispose of it in any manner he thought proper. This view of the subject is fully sustained by what appears to have been the usage and custom of the country in relation to it. In some cases where this restriction occurs, the parties have applied to the governor to be relieved from it, and the applications seem to have been readily acceded to; but most generally alienations have been made without regard to the restrictions, and such alienations have been respected by the authorities, and the alienees under them have continued in the unmolested enjoyment and possession of the premises conveyed; nor does it appear that any forfeitures were ever attempted to be enforced in consequence of them. In this case it appears that the original grantee, Forbes, entered on the land immediately after he obtained the grant; that he had on it a house and a large stock of cattle; that he was in continued occupation from that time until the Mexican authority in the country ceased to exist, and for more than a year after the American occupation commenced. This is considered such a compliance with the conditions of the grant as would have made his claim, so far as this question is concerned, valid against the Mexican government, and would under laws have had the effect to invest him with the full property in the same. That the right so vested could not be divested or impaired by the subsequent sale to the present claimant, who under the deed of conveyance succeeds to all the right and interest which the original grantee held in the premises. The claim is therefore confirmed.

Filed in office Nov. 15, 1853.

GEO. FISHER, *Sec'y*.

Decree.

ROBERT F. STOCKTON
v.
THE UNITED STATES. } Potrero de Santa Clara.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed. The land of which confirmation is made is known by the name of Potrero de Santa Clara, being the same which has been held and occupied by the claimant since the year 1847, and is bounded to the eastward by the river Guadalupe; to the northward, westward, and southward, by a ditch or line of earth thrown up; excluding therefrom the irrigated lands which at the date of the original grant, to wit, on the 29th of February, 1844, were used by the mission of Santa Clara, lying at the north of the garden as described in said grant,

to which reference may be had for a more particular description, and containing a little less than one league.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-three pages, numbered from 1 to 23, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 8 on the docket of the said board, wherein Robert F. Stockton is the claimant against the United States for the place known by the name of "Potrero de Santa Clara."

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-third day of August, A. D. 1854, and of the independence of the United States of America the 79th.

[SEAL.]

GEO. FISHER, *Secretary.*

Endorsed: Filed August 23, 1854.

JNO. A. MONROE, *Clerk.*

Notice of Appeal.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 26th October, 1854.

ROBERT F. STOCKTON
vs.
THE UNITED STATES.

You will please take notice, that in the above case, decided, by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 26th day of July, 1854, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed December 2, 1854.

JOHN. A. MONROE, *Clerk.*

Petition.

To the honorable District Court of the United States, in and for the nor. dist. of Cal'a.

THE UNITED STATES
vs.
ROBERT F. STOCKTON.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 1st day of January, 1855; that a notice of appeal was filed on the 1st day of January, 1855; and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,
A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed August 10, 1855.
JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer.

In the United States District Court for the northern district of California.

THE UNITED STATES
vs.
ROBERT F. STOCKTON.
Potrero of Santa Clara—one league—Santa Clara county.

The answer of Robert F. Stockton, the appellee, to the petition filed by the U. S. district attorney for the aforesaid district, in behalf of the United States, respectfully shows to this honorable court:

That the title issued by Manuel Micheltorena, governor of California, on the 9th day of February, A. D. 1844, to James Alexander Forbes, and by said Forbes transferred to this claimant, for the tract of land called the Potrero of Santa Clara, as more particularly described in his petition filed before the board of land commissioners on the 24th of January, 1852, is a good and valid title; and the claimant prays this honorable court to affirm the decision of the board of commissioners, and to decree the title of the claimant to be valid.

HALLECK, PEACHY & BILLINGS,
Atty's for Appellees.

Endorsed: Filed August 10, 1855.
JNO. A. MONROE, *Clerk.*

Opinion.

THE UNITED STATES, Appellants,
vs.
ROBERT F. STOCKTON, Appellee.

On the 29th day of February, 1844, a grant was issued by Governor Micheltorena to *on* Diego Forbes, who on the 23d day of September, 1847, conveyed the granted premises to the appellee. There is no dispute about the documentary title; and the parol testimony ascertains the occupancy of the premises by grantee, who is described as Diego Alexander Forbes, the erection of the house upon it, and the placing on it a considerable stock of cattle by said grantee, who continued to occupy it until his sale to appellee, who, by his agents, from that time to the present continued to cultivate it; that the whole tract has been fenced in; that this fence was constructed in 1850; that previous to the erection of this enclosure there had been a ditch around the land and houses thereon, and that there are about eighteen hundred acres of the land under cultivation, the whole tract consisting of nineteen hundred acres. There was no approval by the departmental assembly; no judicial survey of the land; but the land is described specifically in the grant, and as thus described been in the possession of the grantee and the appellee claiming under him since 1847. No difficulty can exist as to its locality. The only objection which is urged, arises out of the conditions annexed to the grant against alienation by the grantee, numbered No. 1.

The legal effect of this condition is so elaborately, and, the court must say, ably, considered by the commissioner who delivered the opinion of the board, that there can be no necessity to travel through the investigation again. The opinion concludes as follows: "In this case it appears that the original grantee, Forbes, entered on the land immediately after he obtained the grant; that he had on it a house and a large stock of cattle; that he was in continued occupation from that time until the Mexican authority in the country ceased to exist, and for more than a year after the American occupation commenced. This is considered such a compliance with the conditions of the grant as would have made his claim, so far as this question is concerned, a valid one against the Mexican government, and under the law would have had the effect to invest him with the full property in the same. That the right so vested could not be divested or impaired by the subsequent sale to the present claimant, who, under the deed of conveyance, succeeded to all the rights and interest which the original grantee held in the premises."

In this conclusion this court concurs. A decree must therefore be entered affirming the decision of the commissioners in favor of the validity of this claim.

28/9

Decree.

In the United States District Court for the northern district of California.

THE UNITED STATES vs. ROBERT F. STOCKTON. } No. 77.—L. C. 8.—Stated term, Oct. 29, 1855.

On an appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved on the 3d of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence upon which the said decision was founded; and it appearing to the court that the said transcript has been filed according to law, and counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed, that the claim of the appellee is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league, being the same land described in the grant, and of which the possession was proved to have been long enjoyed: provided, that the said quantity of one square league now confirmed to the claimant be contained within the boundaries called for in the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimant that less quantity.

OGDEN HOFFMAN, JR.,
U. S. Dis. Judge.

Endorsed: Filed October 29, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the 28th day of July, A. D. 1857.

Present, the Hon. Ogden Hoffman, dist. judge.